

**OPINION
56-117**

March 22, 1956 (OPINION)

STATE WATER CONSERVATION COMMISSION

RE: Creation of Water Conservation Districts

This office is in receipt of your letter under date of March 12, 1956, in which you request our opinion as to whether or not the State Water Conservation Commission is authorized by law to establish a water conservation and flood control district embracing territory contained within the boundaries of a county. In other words, whether the boundaries of such district may coincide and be commensurate with the boundaries of a county.

It is our opinion that any answer to your question, whether in the affirmative or in the negative would not be free from doubt.

The creation of water conservation districts was first authorized by the enactment by the Legislature in 1935 of Chapter 228 of the Session Laws of that year. The provisions of Chapter 228 of the 1935 Session Laws were embodied in the Revised Code of 1943 under Chapter 61-16 which remained unchanged until 1949.

In 1949 the Legislature repealed Chapter 61-16 of the 1943 Revised Code and at the same time reenacted the provisions of that chapter with some modifications. The name "Water Conservation District" was changed to "Water Conservation and Flood Control District". The powers of such district were enlarged to include, flood control and flood protection.

Section 61-1615 of the 1943 Revised Code authorized the levy of a tax for water conservation district purposes of not to exceed one half mill on each dollar of assessed valuation in the county in which such district or part thereof was situated.

In 1949 the Legislature amended Section 61-1615 of the Revised Code so as to read in part as follows: "At the time of levying taxes for other county purposes, the Board of County Commissioners shall consider the certificate of the board of commissioners of each district within the county, and it shall levy a tax upon all taxable property in such district within the county sufficient in amount to pay actual and necessary expenses of such water conservation and flood control districts -----," (Underscoring supplied)

Section 61-1615 of the 1949 Supplement was amended in the Legislative Session of 1953 by the passage of Chapter 343 of the Session laws of that year. Section 1 of Chapter 343, incorporated in the 1953 Supplement as Section 61-1615 thereof, authorized a tax levy of not to exceed three mills on all taxable valuation in a water conservation and flood control district to cover estimated expenses thereof for the ensuing year.

In other words, to the enactment in 1949 of Chapter 348 of the

Session Laws of that year, taxes levied to meet the financial requirements of a water conservation and flood control district had to be levied upon all taxable property in the county in which a district or part thereof was situated. And since a tax levy to meet expenses of such district had to be levied upon all taxable property in the county, even if only a part of the county was included within the boundaries of the district, there was valid reason for holding that such district could be legally created embracing the same territory as the county, notwithstanding the fact that Section 61-1605 of the 1943 Revised Code, and the same numbered section of the 1949 and 1953 Supplements, provided that: "In determining the area to be included within the water conservation and flood control district, the commission shall disregard township and county boundaries and shall consider only the drainage area to be affected by the water development proposed and the probable future development thereof. Whenever practicable, such boundaries shall follow section lines". (Underscoring supplied)

Section 2 of Chapter 346 of the Session Laws of 1955 amends Section 61-1505 of the 1953 Supplement by providing that the State Water Conservation Commission, when considering the establishment of a water conservation and flood control district "shall consider only the watershed and drainage areas to be affected by the water development proposed and the probable future development and improvement thereof". Whenever practicable such boundaries shall follow section lines. (Underscoring supplied). And since the State Water Conservation Commission is, under the provisions of Section 2 of Chapter 346 of the 1955 Session Laws, authorized to consider the "watershed and drainage areas to be affected by the water development proposed and the probable future development and improvement thereof", in determining the areas to be included in a proposed district, it is our opinion that if the commission is presented with a sufficient petition requesting the establishment of a water conservation and flood control district including within its boundaries a county, that such petition may be approved provided the report of Chief Engineer of the Commission or a member of his engineering staff, and evidence adduced at the hearing on such petition, shall show that there is need for such district. And provided also that the county, as a whole, will be benefited by the development and improvement of the "Watershed and Drainage Areas" therein.

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